

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION**

R.A. JR. (a minor child, by and through his)
Father and next friend, Richard Lemmel)
Arnold,)
Plaintiff,)
vs.) Case No.: CV-3:06-cv-337-WHA
DEPUTY SHERIFF WALTER LACEY,)
Defendant.)

DEFENDANT'S OBJECTIONS TO PLAINTIFF'S EXHIBIT LIST

COMES NOW the Defendant, Walter Lacey, and in accordance with this Court's Uniform Scheduling Order submits the following objections to the exhibits identified on the Plaintiff's Exhibit List and as grounds therefore says as follows:

1. On April 16, 2007, the Plaintiff served the attached Exhibit List and on April 17, 2007, exchanged as exhibits a total of 23 pages (copies of which are attached for ease of identification.

2. The Defendant objects to the following exhibits with specific reasons below:
A. The Defendant objects to Exhibits marked 1, 2, and 3 and listed as pictures of "area where incident occurred," "gate area," and "grassy area between gate and sheriff's car."

There has been no foundation for the admissibility of these photographs and they are neither relevant nor material. They appear to be photographs of areas that are not related to one another and cannot be properly authenticated. Fed.R.Ev. 401, 402, 403 and 901. The Defendant also objects on the grounds that these photographs are not be dated and the proper foundation has not been laid for their admissibility. Fed.R.Ev. 802 and 901.

B. The Defendant objects to Exhibit marked 4 and listed as "picture of R.A., Jr., injury to hip area."

No photograph was exchanged by the Plaintiff's attorney depicting the plaintiff's hip area. The Defendant objects on the grounds that the Defendant cannot make an informed decision as to whether to object to the photographs since it has not been exchanged. The proper foundation has not been laid for their admissibility. Fed.R.Ev. 802 and 901.

C. The Defendant objects to Exhibits marked 7 and 8 and listed as the Emergency Room record from Community Hospital (7) and Dr. Molly Walker's medical records (8).

There has been no expert nor medical testimony regarding these records. In addition, a Plaintiff must prove by a preponderance of the evidence that he incurred damages as a result of the Defendant's actions. With respect to damages, the Plaintiff may only recover those "reasonable and necessary" medical expenses specifically shown to have resulted from treatment made necessary by the act of the Defendant. See Defendant's First, Sixth and Seventh Motions in Limine previously filed in this action under seal.

D. The Defendant objects to the Plaintiff's Exhibit marked 9 and listed as "State of Alabama Complaint signed by Deputy Lacey."

This Court has granted the Defendant's Motion for Summary Judgment dismissing all claims with the exception of the Fourth Amendment excessive force claim. Exhibit 9 is neither relevant nor material to any issue before the court and the admission of this Exhibit would only serve to confuse the jury and unduly delay the trial of this matter. If this Exhibit (Complaint filed two months after the incident) is shown to the jury, it will be necessary for the Defendant to call additional witnesses to explain the mishandling of the Complaint by the Macon County Juvenile Court, which would lengthen the trial of this matter. Fed.R.Ev. 401, 402, 403 and 901.

/s/ C. Winston Sheehan, Jr.

C. WINSTON SHEEHAN, JR.

Attorney for the Defendant, Walter Lacey

OF COUNSEL:

BALL, BALL, MATTHEWS & NOVAK, P.A.
2000 Interstate Park Drive, Suite 204
Post Office Box 2148
Montgomery, Alabama 36102-2148
Phone: (334) 387-7680
Fax: (334) 387-3222

CERTIFICATE OF SERVICE

I hereby certify that on April 26, 2007, I electronically filed the foregoing with the Clerk of the Court, using the CM/ECF system which will send notification of such filing to the following registered persons and that those persons not registered with the CM/ECF system were served by U.S. mail:

Hon. Arlene M. Richardson
Richardson Legal Center, LLC
Post Office Box 971
Hayneville, AL 36040-0971

/s/ C. Winston Sheehan, Jr.

OF COUNSEL